

Exhibit A

TRANSCRIBED FROM DIGITAL RECORDING

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JESSICA NESBITT,

Defendant.

Case No. 19 CR 692

Chicago, Illinois
September 18, 2019
2:23 p.m.

TRANSCRIPT OF PROCEEDINGS - Initial Appearance and Arraignment
BEFORE THE HONORABLE MARIA VALDEZ, MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

HON. JOHN R. LAUSCH, JR.
UNITED STATES ATTORNEY
BY: MR. DEVLIN N. SU
Assistant United States Attorney
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604

For the Defendant:

MR. BARRY D. SHEPPARD
180 North LaSalle Street
Suite 2510
Chicago, Illinois 60601

Also Present:

MS. CARLA TRAMONTE, US Pretrial
Services

****PLEASE NOTIFY OF INCORRECT SPEAKER IDENTIFICATION****
NOTE: FAILURE TO STAND NEAR THE MICROPHONE MAKES
PORTIONS UNINTELLIGIBLE AND INAUDIBLE.

Transcriber:

SANDRA M. MULLIN, CSR, RMR, FCRR
Official Court Reporter
United States District Court
219 South Dearborn Street, Suite 2260
Chicago, Illinois 60604
Telephone: (312) 554-8244
Sandra_Mullin@ilnd.uscourts.gov

1 (Proceedings heard in open court:)

2 THE CLERK: Case 19 CR 692, United States of America
3 versus Suppressed, Initial Appearance and Arraignment Hearing.

4 MR. SU: Good afternoon, your Honor. Devlin Su for
5 the United States.

6 MR. SHEPPARD: Good afternoon, Judge. Barry Sheppard,
7 appearing on behalf of Jessica Nesbitt. Seek leave of court to
8 file my firm's appearance.

9 THE COURT: Ms. Nesbitt is present in court. We also
10 have?

11 PRETRIAL SERVICES OFFICER: Pretrial Services. Your
12 Honor, good afternoon. Carla Tramonte.

13 THE COURT: All right. Good afternoon to everyone.
14 We're here for Ms. Nesbitt's initial appearance and
15 arraignment. Mr. Sheppard, do you have a copy of the
16 indictment?

17 MR. SHEPPARD: I do, your Honor.

18 THE COURT: Would you like to waive formal reading?

19 MR. SHEPPARD: So waived, your Honor, yes. There
20 will be, at this time, a plea of not guilty, subject to formal
21 arraignment.

22 THE COURT: All right. The plea of not guilty to all
23 counts of the indictment will be noted. Let me have the
24 government advise Ms. Nesbitt of the maximum possible
25 penalties.

1 MR. SU: Your Honor, Count 1 carries a maximum
2 penalty of five years in prison, \$250,000 fine, a term of
3 supervised release of two to three years.

4 Counts 2 through 8 each carry a maximum penalty of
5 five years in prison, a \$250,000 fine, and two to three years
6 of supervised release.

7 Count 9 carries a maximum penalty of 20 years in
8 prison, a \$250,000 fine, two to three years of supervised
9 release.

10 Count 10 carries a maximum penalty of ten years in
11 prison, \$250,000 fine, two to three years of supervised
12 release.

13 Counts 11 through 13 carry a maximum penalty of ten
14 years in prison, a \$500,000 fine, and two to three years of
15 supervised release.

16 In addition, all 13 counts each carry a mandatory
17 \$100 special assessment. And there is a forfeiture allegation
18 contained in the indictment, requiring forfeiture of the assets
19 identified in the indictment on her guilty conviction.

20 THE COURT: Ms. Nesbitt, do you -- you have a copy of
21 the indictment through your counsel. Do you understand the
22 maximum possible penalties to the 13 counts?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Let me advise you of your
25 rights. You have the right to remain silent. You are not

1 required to make any statements. If you choose to make a
2 statement, you can stop at any time. You must remember that
3 any statement you make can be used against you. Do you
4 understand this?

5 THE DEFENDANT: Yes.

6 THE COURT: You have the right to have an attorney
7 represent you throughout all phases of this criminal
8 proceeding. If for any reason you cannot afford an attorney,
9 you need to make an application to the court. And if the court
10 finds you're entitled to appointed counsel, we will appoint an
11 attorney free of charge. The important point is you are
12 entitled to counsel, whether or not you can afford it. Do you
13 understand this?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. She has been advised of her
16 rights, and she indicates that she understands her rights.

17 What is the government's position on bond?

18 MR. SU: Your Honor, we are proposing a \$250,000
19 unsecured bond. We have conditions of -- proposed conditions
20 of release worked up. I believe there is a dispute over how
21 restrictive her, I guess, freedom of movement should be. In
22 the government's position is that she should be placed under
23 home incarceration. I understand defendant's counsel is
24 objecting to that particular condition.

25 THE COURT: Is that the only condition that's being

1 objected to at this time?

2 MR. SHEPPARD: Yes, your Honor.

3 THE COURT: And from pretrial services' perspective,
4 has there been a background check in any way?

5 PRETRIAL SERVICES OFFICER: Yes, your Honor.

6 MR. SU: And, your Honor, I can go into our rationale
7 behind our position now, if you'd like.

8 THE COURT: Let me just get some further
9 information --

10 MR. SU: Absolutely.

11 THE COURT: -- from pretrial, and then I'll hear from
12 you, Mr. Su.

13 PRETRIAL SERVICES OFFICER: Your Honor, there was one
14 prior arrest in 2011, of promoting prostitution, which she
15 received three years conditional discharge.

16 MR. SHEPPARD: May I interrupt on that one aspect,
17 Judge? The --

18 THE COURT: Give me a moment. Let me just finish up
19 with our officer here.

20 MR. SHEPPARD: I wanted to correct that, though.

21 THE COURT: I'm going to give you a chance to do
22 whatever you need to do, but I've got to get further
23 information. Is there anything further?

24 PRETRIAL SERVICES OFFICER: Yes, your Honor. Just
25 for the court's information, there is a valid FOID card issued,

1 and it's active. But she reports it's in her residence.

2 THE COURT: And any passports?

3 PRETRIAL SERVICES OFFICER: There is a passport. And
4 may I also add, your Honor, she has two firearms in the
5 residence that we would like to have removed.

6 THE COURT: Okay. Anything else?

7 All right. Now I'll hear any factual objections to
8 the information that has been conveyed by pretrial services.

9 MR. SHEPPARD: Thank you, your Honor. We are privy
10 to the arrest. The -- there was a two-year period of
11 conditional discharge on a reduced offense of disorderly
12 conduct.

13 THE COURT: So that's not an objection, you just have
14 an explanation. Is that what's going on right now?

15 MR. SHEPPARD: That's correct.

16 THE COURT: Okay. So I'll give you a chance after
17 the government makes their formal presentation. Then you go
18 second.

19 MR. SHEPPARD: Okay.

20 THE COURT: All right. Go ahead, Mr. Su.

21 MR. SU: So, your Honor, our request for home
22 incarceration is based on the noncompliance -- defendant's
23 noncompliance with the law during this investigation. And by
24 way of background, I think your Honor can glean from the
25 indictment that this is an investigation into the defendant's

1 operation of a house of prostitution called the Kink
2 Extraordinaires, or KE, which operated at a residential
3 neighborhood in the 2400-block of West Augusta Boulevard in
4 Chicago.

5 We've been investigating this for some time, and this
6 investigation became overt in January of 2017, when we executed
7 search warrants, both at the defendant's residence, as well as
8 the KE building at Augusta. At that point, she certainly knew
9 that there was a federal investigation into her and her illegal
10 activities. Immediately thereafter, we began speaking to
11 former employees who quit the business after that search in
12 January 2017. They told us in the ensuing months that Nesbitt
13 immediately reopened that business to clients, specifically
14 stating that because the government had taken credit card
15 terminals as well as computers used to book appointments
16 electronically, that Nesbitt told her clients that she could
17 only take cash, and then she started taking and making these
18 appointments by hand on paper, rather than electronically.

19 Fast forward to earlier this -- earlier this summer
20 and after this grand jury indictment was returned, we resumed
21 conducting surveillance at the business. And I'm going to walk
22 through several instances of surveillance that indicated that
23 this business was actually still operational.

24 In August of 20 -- August 23rd of 2019, FBI observed
25 multiple adult males being buzzed into the building, including

1 one who entered with a bottle of champagne at about 9:30 in the
2 morning.

3 On September 3, 2019, surveillance observed multiple
4 adult males exiting the building through the front and as well
5 as the back garage door in the afternoon.

6 THE COURT: Can you give me an indication of what the
7 building -- what kind of area is the building located? Is it
8 residential? Is it industrial?

9 MR. SU: Your Honor, it's a residential neighborhood.
10 The building is a standard, I think, Chicago three-flat. There
11 is three units in there, three residential units. So from the
12 outside appearance, it looks like a regular apartment building,
13 but the investigation revealed it has been used for illegal
14 activity.

15 Getting back to the September 3rd, one of these adult
16 males was one customer who brought in two duffle bags. He was
17 identified based on his car registration. His name appears in
18 the seized electronic appointment software as personally
19 booking sexual activities, prostitution activities, at KE back
20 in 2016.

21 On September 13th, the defendant's car was scene
22 parked inside the garage at the KE building at about 2:30 in
23 the afternoon. Later that same day, law enforcement checked
24 Gentleman's Pages, which is an adult services periodical
25 referenced in the indictment. They observed the same

1 advertisement that's referenced in the indictment still posted
2 and active. And we've reproduced a screen shot of that
3 advertisement in the folder of the exhibits that we handed to
4 your Honor. Still contains the same sexually-charged language,
5 same sexually-charged photographs. The defendant is personally
6 depicted on that advertisement, as are employees of KE who were
7 previously identified as employees during the life of the
8 conspiracy that we charged.

9 We also obtained, as reproduced also in that folder
10 that your Honor has, her current bank records. Those indicate,
11 at least for this one account, that KE is now going by the
12 business name of Security (sic.) Management Enterprises. These
13 are statements from August of 2019, indicating that the account
14 took in \$34,000 in credit card deposits and wrote payroll
15 checks, about \$17,680, to her employees that month, which is
16 the same pattern of financial activity that's referenced in the
17 indictment. Some of those payroll recipients are the same
18 employees of the business we identified as providing
19 prostitution services to clients back in 2017.

20 And then, finally, this morning, we spoke to
21 individuals who were seen entering and leaving that same
22 building. They said that they were maintenance men hired by
23 the defendants to work on various projects inside that
24 building. One of them said that he had personally observed sex
25 toys in every single room in that building.

1 And so I think it's clear that, even after law
2 enforcement conducted a search warrant, even after she knew
3 that she was a target of, I think, a very serious federal law
4 enforcement investigation, she is continuing to conduct these
5 same illegal activities, which I think implies two things: I
6 think, first, her resumption of business means that she is
7 earning income that we haven't seized. As the indictment
8 reflects, we did seize numerous assets, but it seems that she
9 is now able to replenish at least some of those, meaning that
10 she has at least some resources to flee.

11 But second, I think, more importantly, our position
12 is that this resumption of the illegal activity shows that she
13 lacks respect for the law, and I don't think it bodes very well
14 for her respect for your Honor's release orders, for
15 supervision by pretrial. And so we believe that a more
16 restrictive condition of home incarceration is appropriate on
17 her, given that she poses more of a supervision risk than your
18 average defendant.

19 THE COURT: All right. So the two group exhibits,
20 you want them part of the record, you want the court to
21 consider them in --

22 MR. SU: Yes, your Honor.

23 THE COURT: All right.

24 MR. SU: And I've handed copies to the defense
25 counsel as well.

1 THE COURT: Mr. Sheppard, now you're up.

2 MR. SHEPPARD: Thank you, your Honor. Preliminarily,
3 I wanted to address that one issue that the pretrial assistant
4 referenced. The case charging prostitution was dismissed
5 against my client several years ago, and the charge was -- to
6 which there was a negotiated plea on was disorderly conduct.
7 That was a period of conditional discharge on a misdemeanor
8 offense. That offense has since been sealed, ordered sealed,
9 by the presiding judge's office of Cook County. So with regard
10 to the -- any allegations of prostitution that -- those --
11 those are not accurate. So simply the -- and then I have a
12 copy of the rap sheet. The city --

13 THE COURT: So the original charge was prostitution?

14 MR. SHEPPARD: That's correct.

15 THE COURT: There was a deal made for a two-year
16 conditional discharge of the original charge, and that would --
17 turned into a disorderly conduct.

18 MR. SHEPPARD: That's correct. That's accurate. I
19 can show counsel, I have the rap sheet.

20 THE COURT: I don't think there is any -- is there
21 any objection to that?

22 MR. SU: No.

23 MR. SHEPPARD: Okay. So that's just with reference
24 to her previous background, and it says something about the
25 burden of proof in that case. It says something about the --

1 the result was a, whatever it was, it was disorderly conduct.

2 So with that said, Judge, the defendant has been
3 operating a business, a fetish-based business. Now, obviously
4 we're all mature adults here that -- and we can say the words
5 without recoiling. That doesn't necessarily mean that there is
6 acts of prostitution being engaged. And counsel said that
7 there was some hearsay which indicates that there was --
8 somebody saw sex toys. Well, those aren't unlawful, your
9 Honor. And there -- there is nothing that indicates to the
10 court that there was acts of sexual conduct having occurred
11 since the inception of this investigation.

12 Yes, she is -- has continued to conduct business, but
13 of course we all know that there is a presumption of innocence,
14 certainly, without any scintilla of evidence in a pre-charge
15 just because a search warrant was executed and somebody is
16 under investigation. Investigations oftentimes don't culminate
17 in charges. Now there has been charges. Now there has been an
18 indictment. It's -- there at least has been enough evidence
19 presented to the grand jury to establish probable cause, let's
20 say.

21 Prior to that, to hold the defendant to some type of
22 standard that she conducted some type of business while she was
23 being investigated, that doesn't seem quite fair. And I think
24 it's against the intent of all the bail statutes.

25 THE COURT: Well, you're not disagreeing that she

1 conducted some type of business, you're disagreeing that it was
2 illegal.

3 MR. SHEPPARD: That's right.

4 THE COURT: You're saying she conducted a business
5 which you believe to be legal, and the government is asserting
6 to be illegal.

7 MR. SHEPPARD: That's exactly correct.

8 THE COURT: And the grand jury asserted to be
9 illegal.

10 MR. SHEPPARD: And we do believe -- and we've
11 conducted extensive investigation ourselves and research. And
12 we believe that the -- there are serious burden of proof issues
13 for the government to meet in this type of case. Fetishes are
14 legal. Sometimes they're embarrassing, but they're legal.

15 THE COURT: Well, not all fetishes would be legal;
16 correct?

17 MR. SHEPPARD: Well, if there is not involved in any
18 type of unlawful touching or penetration.

19 THE COURT: Well, you're saying unless it's legal --
20 unless it is, obviously, illegal, it's legal. You're right,
21 there are some fetishes, my guess would be, that would be
22 entirely legal. But there are also some that would be illegal.

23 MR. SHEPPARD: Our position is that her involvement
24 was restricted to legal fetishes.

25 THE COURT: Okay.

1 MR. SHEPPARD: And if that were the case, and if it
2 were, and, of course, this involves testimony and evidence.
3 And just for the government to float it up before the court
4 doesn't prove anything. It just is a lawyer, or investigator,
5 suggesting that this is their belief. So our belief is
6 contrary to that.

7 So with that said -- and the only reason I even
8 address this is of no disrespect to the government
9 investigation or the government attorney at all, just, simply
10 because I don't think the defendant should be punished by
11 conducting affairs which she believes are legal. And if they
12 were non-illegal, but they weren't acts of prostitution, put it
13 the other way, then they would be legal. Regardless how
14 embarrassing and how cutting edge they may have been. Listen,
15 I know the court has seen these pictures of women in
16 provocative poses and the word "kink" used. There is -- there
17 is no actual pornography displayed, to the best that I can see.
18 These are clothed women in tops and bottoms. Certainly
19 nothing -- no allegation whatsoever of under-age females
20 involved in this, any type of child pornography, not even
21 suggested by any of the evidence.

22 The -- I suppose what I'm suggesting to the court is
23 that this case should be viewed like all other cases. The
24 government is willing to agree to an unsecured bond from the
25 defendant to come to court. And, by the way, here she is in

1 court. When counsel, not Mr. Su, but his colleague informed my
2 law partner this morning that an indictment had come down, it
3 was agreed that she be permitted to self-surrender. We met
4 with the FBI agent today, Mr. Jewell, who is present in court.
5 We drove in to -- at separate times, but we met there. She was
6 processed. We then drove from there to the marshal's office,
7 the 24th floor. There is not even a small suggestion of flight
8 in this case. Quite the contrary.

9 My client has traveled. She has a 13-year son. So
10 she has taken her son -- she is a single mom, with a
11 13-year-old son, and she has traveled to faraway places. She
12 was at the Galapagos Islands on a sightseeing turtles and type
13 of exotic wildlife there. Recently she has made several trips
14 abroad, which -- for recreation. And she has come back. So
15 she has known she has been under investigation for the last two
16 years since the search warrant was issued. And I want to be
17 precise about this because I have the exact copy here. We
18 received notification January 10th of 2017. That's been over
19 two years. There has been no effort to flee.

20 I think what the government attorney is telling you
21 can be looked at both ways. She continued to go to work with a
22 presumption of innocence. With no -- no grand jury indicting
23 her, no arrests having been made. An investigation, a search
24 warrant having been executed, and no arrests made. So should
25 somebody curl up and hide at that point or continue to go to

1 work? Particularly, let's just say she is innocent because
2 that is the presumption. I say, yes. So the government says,
3 we don't want her to continue to do the work that she thought
4 she could do. The court can order her not to engage in any
5 type of specific activity. The bond statute, 3142,
6 Subsection 14, does say -- does grant the court authority to
7 address issues of possible flight and threats to public safety.
8 Your Honor, there has not been the slightest allegation that
9 anybody has ever been so much as injured at my client's place
10 of business. She has zero threat to public safety. And in
11 terms of flight, she is here. There is zero risk -- I believe
12 zero risk of flight. I don't think the government can point to
13 any movement which would indicate that she is trying to
14 establish a residence anywhere other than where she lives,
15 right here in Chicago.

16 Her son is going to Lane Tech High School. She is
17 scheduled to participate in open houses. I'm going to read
18 from the text she sent me: High school enrollment just began.
19 We are scheduled with several open houses over the next
20 month-and-a-half.

21 And I want my client's permission to reference these.

22 THE DEFENDANT: Uh-huh.

23 MR. SHEPPARD: And have scheduled selective
24 enrollment testing. She chaperones field trips at his school
25 and assists in fundraisers. She personally drives her son to

1 school every day and picks him up. And he is currently -- he
2 is going to be going to Lane Tech. But the name of the --

3 THE DEFENDANT: We have to apply to multiple
4 different high schools. So we have a month-and-a-half for
5 enrollment.

6 MR. SHEPPARD: And the grade school is?

7 THE DEFENDANT: He currently goes to the Coonley
8 Regional Gifted Center. He is in a class where he learns two
9 grade-level advanced. So it's very hands-on.

10 MR. SHEPPARD: Okay. So she is a single mom. The
11 father is not involved in the life at all. To lock her down
12 all day where she can't do mom things is onerous, your Honor,
13 and isn't related to any valid prosecutorial or judicial goal.
14 I know the goal is to secure a defendant's appearance. She is
15 here, standing before you. She has conducted herself in a
16 dignified manner in the face of 30 agents coming into her home
17 seizing a lot of her funds. She has had assets seized. We
18 filed on those assets. So this isn't like there is a shameful
19 attempt to just say, keep the money and go hide somewhere. We
20 filed for relief on those assets in a civil manner. We've
21 complied with everything that a person can possibly be expected
22 to comply with under our laws. So, and, again, once we're
23 informed by the prosecutor, and we've requested the ability to
24 self-surrender and granted that. There is -- I think the issue
25 of flight is a non-issue.

1 THE COURT: Well, let me cut to the chase because
2 what the government has argued is that she has, in their view,
3 continued to engage in illegal activity. And that Government's
4 Group Exhibit 1 and 2, they offer as evidence of that. And you
5 are making the argument that it is legitimate business
6 activity, it is not illegal, criminal activity.

7 So let me ask you a question about the bank records.
8 The checks that are attached, what would you describe these
9 checks to reflect?

10 MR. SHEPPARD: And, your Honor, I've just been handed
11 these as I walked in this room at five minutes to 2:00, so I
12 haven't had a chance to fully analyze each and every check. If
13 I can -- if I can just suggest, and I don't want my client to
14 comment on these at this point because we haven't had a chance
15 to review those together, but -- and I am trying to determine
16 who these individuals -- if I can have just a moment?

17 THE COURT: Yes, go ahead.

18 MR. SHEPPARD: For instance, the check made out --
19 and I'm just staring at Page 1 of 9, to Darlene Munoz for
20 \$3,000, I'm told that that's an employee of the business, and
21 it's payment. So -- and I suppose some of these other girls
22 have received payment. You might say the girls made a decent
23 amount of money, okay, that's -- that maybe means -- in some
24 law firms people make \$3,000 on a check. So I don't think it
25 means anything, actually. So I know there is a lot of paper

1 here, but, you know, if the government was able to say to you,
2 here, she cashed all these checks, and, you know, we have
3 evidence that she cashed all these checks from customers and
4 didn't deposit the funds, that would be one kind of case. She
5 is not charged on any tax evasion in this case. She is charged
6 with, in some counts, depositing a lot of money.

7 I know she is charged with structuring, I understand
8 that part. But she is charged with depositing a lot of cash,
9 actually, and paying taxes on it. So whether it was --
10 structuring is obviously a burden of proof issue as well, and
11 it's -- to hold a payment to employees against somebody, I
12 frankly can't see how this -- in response to the court's
13 inquiry, I don't see where this in any way aids you in
14 determining whether she is a threat to the safety of the
15 community or a threat to non-appear. So in terms of this --
16 these pictures --

17 THE COURT: Well, let me go back to the checks
18 because --

19 MR. SHEPPARD: Sure.

20 THE COURT: -- if this is a business and these are
21 reflective of payroll to employees or independent contractors,
22 it is -- there is no indication that this is payroll. There is
23 no withholding. There is no, you know, indicia of an
24 employee-employer relationship. And even if it was an
25 independent contractor situation, there is usually a lot more

1 than just a check.

2 MR. SHEPPARD: Well, Judge --

3 THE COURT: So that was my concern, is --

4 MR. SHEPPARD: Understood.

5 THE COURT: We're talking legitimacy of business and
6 whether or not -- you know, I wanted to give you a chance to
7 address that concern that the court had, in light of this
8 exhibit.

9 MR. SHEPPARD: Thank you. My immediate answer to you
10 would be independent contractor. You said the words yourself.

11 THE COURT: No, except you don't usually just have a
12 check to an independent contractor.

13 MR. SHEPPARD: Well, I'm not so sure that's the case.
14 I don't know. I'm sure there is some type of invoicing. I'm
15 sure -- you have what the government is parsing out here as to
16 present to you. Then obviously this isn't a trial, and so
17 there is nobody here for me to cross-examine. But sometimes
18 independent contractors do get paid in a check. If a lawyer
19 was to hire an expert witness, of course there is an invoice,
20 but then there is a check.

21 So -- okay. I'm told, under information and belief,
22 that there is withholding, and it's reflected in the bank
23 account. If that's your Honor's concern as to whether there
24 has been withholding paid, I'm informed that there has been
25 withholding paid. But just simply solely because there is

1 checks issued to independent contractors and not traditional
2 payroll checks, I don't think that, respectfully, I understand
3 the court's question --

4 THE COURT: But it has --

5 MR. SHEPPARD: -- but I don't think it establishes
6 anything.

7 THE COURT: It certainly establishes more than what
8 you're saying because, if this was truly an employer
9 relationship, then there would be a lot more than just this.
10 So that's why I had it in my mind. But let me have the
11 government address that.

12 MR. SU: Your Honor, in fairness, I do see a debit
13 out of this account to the Illinois Department of Revenue,
14 which I think indicates tax purposes. But I will say that this
15 type of financial activity, in terms of taking in deposits,
16 credit cards, \$34,000, and then paying these checks out to the
17 payroll employees is exactly what we've alleged in the
18 indictment. It's exactly what we've seen throughout the
19 investigation. I will say that these amounts seem fairly high
20 to me, your Honor. And based on what we know about the
21 business, how they charged more for prostitution services and
22 less for strictly legal fetish sessions, I think this type --
23 these payments and the amount of these payments is consistent,
24 again, with the provision of illegal activity.

25 Going back to the first comment that counsel

1 mentioned about presence of sex toys being in the --

2 THE COURT: Well, let me just address to you. The
3 Illinois Department of Revenue that you're referencing, so we
4 can all be on the same page, would be the second page, really
5 the third page of information in the government's bank records,
6 group exhibit.

7 MR. SU: That's right, your Honor.

8 THE COURT: And it's for \$396.

9 MR. SU: That's correct.

10 THE COURT: And so that is -- is an argument to
11 represent the taxes withheld for the individuals for the month?

12 MR. SU: That's what it seems like to me, your Honor.
13 And, again, I want to be accurate and fair to the defendant.
14 But, you know, even in our investigation we saw that she was
15 withholding taxes at the same time that she was paying
16 employees for sexual activity and prostitution activity.

17 Getting back to the sex toys, your Honor, Illinois --
18 the Illinois Prostitution Statute expressly prohibits sexual
19 contact between an object and a person's genitals. And so
20 there is -- obviously we don't have -- we didn't enter the
21 building today, so we didn't personally verify this. But
22 coming from somebody who had absolutely no reason to lie to law
23 enforcement about what you saw, I think it is indicative that
24 there is sexual activity going on -- illegal sexual activity
25 still going on.

1 And, finally, with respect to Group Exhibit No. 1 --

2 THE COURT: Let me just understand your argument. So
3 the use of the implements that were purportedly seen in every
4 room, that in and of itself would mean prostitution under the
5 law?

6 MR. SU: My understanding of the Illinois
7 Prostitution Statute, and we cited in the indictment, is that
8 it criminalizes contact between the genitals of one person and
9 an object. And so I think there is no real -- there is no real
10 reason for those implements to be present, unless they're going
11 to be used. And if they're going to be used, then that's
12 illegal.

13 With respect to the advertisement, your Honor, this
14 is the same copy. And by copy I mean, you know, the
15 advertisement's language that's been used in this advertisement
16 as we saw during our investigation. And it uses -- I mean,
17 obviously it's not going to come out and say, you know, we're
18 providing prostitution. But it uses key words that we found to
19 be significant to imply that they're willing to provide sexual
20 activity, such as fantasy role play, sensual scenes. Making
21 your fantasies a reality. We are erotically accommodating. I
22 mean, this is the same exact language that we saw back when we
23 were -- had much greater visibility into the operations of the
24 business. And our evidence is that this was an advertisement
25 for prostitution services.

1 THE COURT: All right. Mr. Sheppard?

2 MR. SHEPPARD: Judge, I understand that counsel's
3 opinion of the sex toy statute, although, you don't have
4 anything in writing on that, there are obviously incidents
5 where masturbation in the presence of another person is not
6 illegal. So we're not here to try the case today, obviously.

7 So what I'm contesting before the court is an
8 overreaching restriction on the defendant's pretrial freedom.
9 To be precise, the Statute 3142 does require the court impose
10 the least restrictive set of conditions, not the most
11 restrictive conditions. In this case what counsel is proposing
12 is, in my view, unduly restrictive. And there is actually no
13 reason, other than it sounds like the government is trying to
14 be punitive based on the fact that the defendant continued to
15 operate a business while under investigation. And they
16 basically said that to you. That's their position.

17 THE COURT: I want you to address what the government
18 is saying is, they're saying their understanding of the law,
19 and as articulated by the grand jury through the indictment, is
20 that all of the activities that you have described that have
21 been ongoing that you believe are legal in nature are believed
22 by the government and asserted by the grand jury to be at least
23 probable cause to be illegal in nature.

24 So the government is saying, she is -- you know, if I
25 let her -- let her out without the restriction they're

1 requesting, she is going to continue to engage in the illegal
2 conduct that forms the basis of the indictment. And generally
3 that is a powerful argument to make. For example, I'm not
4 equating the same thing, but if somebody is here on a drug
5 case, and if they say, you know, they've continued to engage in
6 the exact same kind of activity that is articulated in the
7 indictment, then that is a powerful piece of evidence for the
8 court to deal with on bond. So that's the kind of argument
9 that the government is making here.

10 And you are saying it is just -- it is a legal
11 activity, and they're saying it's an illegal activity. But
12 we're here in a court of law because the grand jury has found
13 probable cause to believe that a crime has been committed and
14 that Ms. Nesbitt is the one who committed the crime.

15 So now I have to deal with, do I let her continue the
16 activity that the grand jury has determined to be probable
17 cause to believe that a crime has been committed, or is there
18 something else that I can do to deal with that. So it's time
19 to be creative.

20 MR. SHEPPARD: I understand that. I appreciate the
21 court's thinking outside the box in this case. Your Honor,
22 there is also the possibility of, I don't know this to be the
23 case, that the women who work for Ms. Nesbitt may have been
24 acting without her knowledge. That's a possibility. And I
25 don't think there is any -- counsel has not proffered to any

1 incidents where my client personally engaged in acts of
2 prostitution since the commencement of this investigation. So
3 the -- I guess it's -- there is a possibility of accountability
4 in the theory, I get that part. So, in response to your
5 Honor's question, this is a source of income for my client. So
6 I'm hesitant to --

7 THE COURT: I do understand that, but, again, you
8 know, the government is making the assertion that, you know,
9 like the drug dealer, I can't just say, okay, this is how you
10 get your money, I better let you do that while you're on bond.
11 Again, not equating the two criminal -- alleged criminal
12 activities, but that is basically the argument that is before
13 me. So the grand jury has found probable cause that the
14 activity that the government is asserting, she continues to
15 engage in.

16 MR. SHEPPARD: But she hasn't violated any bond
17 restrictions --

18 THE COURT: No.

19 MR. SHEPPARD: -- up until today, this moment.

20 THE COURT: It's about whether or not she is going to
21 abide by all laws. And that's always a requirement for bond
22 purposes.

23 MR. SHEPPARD: Of course.

24 THE COURT: And if somebody is not -- isn't in
25 violation of any law, then I'm going to be concerned about that

1 and try to deal with that in the conditions of release.

2 MR. SHEPPARD: Of course. In every criminal case,
3 I've been practicing defense criminal law for 43 years, and
4 every single criminal case, one of the conditions of bond is
5 that they do not engage in criminality. So can that -- does
6 that mean --

7 THE COURT: And being a judge for 14 years dealing
8 with these issues in almost every case of which the alleged
9 activity is what is alleged being continued as activity, then I
10 don't let them engage in that. So I'm trying to figure out how
11 to deal with this situation.

12 MR. SHEPPARD: I understand that. But, your Honor,
13 if somebody were, to use your metaphor, engaged in drug
14 dealing, they don't necessarily get locked up or locked at home
15 during the course of the case. And even though there is a
16 probable cause finding by the grand jury, that is -- there has
17 now been some threshold --

18 THE COURT: Well, I will say, I do do that, if I
19 believe that they have engaged in the activity and that there
20 is a chance they're going to continue to engage it, yes --

21 MR. SHEPPARD: This is a little more of a --

22 THE COURT: -- it does -- it does affect the
23 conditions of release, obviously. So I -- no, you're -- the
24 dilemma that you have is, this is your client's bread and
25 butter. This is how she survives and supports her child. But

1 I have an argument that I can't ignore that this is exactly the
2 kind of activity that the grand jury has determined is there is
3 probable cause to believe that it's criminal in nature. So I'm
4 open to what the government is saying. I'm not shutting them
5 down. But I'm trying to figure out, is there a way of having
6 some middle ground, and I'm not sure there is. And I'm asking
7 you to be creative too.

8 MR. SHEPPARD: Thank you. I really appreciate that.
9 If I could just have a moment to confer with my client?

10 THE COURT: Yes.

11 MR. SHEPPARD: Thank you, your Honor.

12 THE COURT: Put the noise on, please.

13 (Recess taken.)

14 THE COURT: I'm back. The court has a -- I have to
15 leave at 3:20 for a meeting, so we need to get things moving.

16 MR. SHEPPARD: I can suggest to the court a possible
17 middle ground. That my client be ordered -- obviously ordered
18 not to -- in addition to the standard condition, not be
19 permitted to engage in any acts of prostitution. And perhaps
20 she can be ordered not to have any client personal sessions
21 with any customers. She owns the building, your Honor. I
22 understand that an address restriction is a possibility.

23 THE COURT: So what the court is willing to do is not
24 have her on incarceration, but to not have her engage in any
25 business activities of the type that she has, in fact,

1 described, what you consider to be the legal activities, which
2 is engaging in any fetish type of role playing, any physical
3 touching using implements for a sexual, you know, desire,
4 either from the employee or independent contractor and client.
5 So basically she is not going to be able to do even what she
6 had believed she was legally doing. She can get a job at a
7 store, she can do other kinds of employment, but not the type
8 of activities that she describes as legal in nature. I want to
9 make sure if that is clear to everybody.

10 MR. SHEPPARD: That's fair enough.

11 THE COURT: Is there any other dispute with respect
12 to the bond?

13 MR. SU: No, your Honor, I believe that's it.

14 THE COURT: All right. So work that up. I'll take a
15 five-minute break, and I'll resume the bench.

16 MR. SHEPPARD: Thank you.

17 THE CLERK: All rise. Court is now in recess.

18 (Recess taken.)

19 THE CLERK: All rise. Court now resumes in session.
20 The Honorable Maria Valdez presiding. Please be seated and
21 come to order.

22 MR. SU: Your Honor, while defendant is signing the
23 paperwork, I just want to clarify one thing, which is, I
24 understand your order to mean that she is not allowed to engage
25 in prostitution or fetish activity of any kind, either

1 personally, even outside of, in the room, over the phone, over
2 the internet either -- or directing anyone else to do that on
3 her behalf; is that correct?

4 THE COURT: I'm sorry, what was the last part?

5 MR. SU: Or directing anyone else to provide those
6 services on her behalf?

7 THE COURT: Yes.

8 MR. SHEPPARD: Judge, may I get a clarification?

9 THE COURT: In other words, get a different line of
10 work at this stage. And if you win the case, then you go back.

11 MR. SHEPPARD: Judge, what about being on the
12 telephone with somebody? Phone sex is legal, so she -- barred
13 from that when there is no -- there can't be an act of
14 prostitution, there can't be touching through a telephone.

15 THE COURT: What about phone activities?

16 MR. SU: Your Honor, our position is, given the
17 nature of the investigation, given what we've just discussed
18 today, any sort of involvement in this industry at all is going
19 to lead right back to the provision of illegal activity.

20 THE COURT: I tend to agree with the government. No
21 activities of a prurient nature, may I say that much. So a
22 different line of work altogether.

23 MR. SU: And, your Honor, may I also ask that your
24 Honor consider a travel restriction to the 2452 West Augusta
25 Boulevard address?

1 MR. SHEPPARD: Judge, we oppose that. This is a --
2 she owns this building, and she needs to get in there. There
3 is a lot of business activities that are totally lawful that
4 she could conduct in there. And there is -- it's her property.

5 THE COURT: The travel restriction is granted. So no
6 travel there.

7 MR. SHEPPARD: Judge, may she have permission to go
8 into the building to at least organize her affairs? To simply
9 be barred from the building now from here on in is --

10 THE COURT: She can go in once to get what she needs
11 to get out.

12 MR. SHEPPARD: There are five floors in this
13 building, your Honor.

14 THE COURT: She can go in once, once, to get what she
15 needs to get, and then she can get out. From what I see from
16 the photos, it's mostly displays and not necessarily business
17 records that would be necessary.

18 Okay. Anything else?

19 MR. SU: That's it from the government, Judge.

20 THE COURT: All right. Please get the paperwork to
21 the clerk, please, so I can admonish Ms. Nesbitt. And then we
22 will give you further dates in front of the District Court.

23 MR. SHEPPARD: Judge, in terms of -- if there is --
24 if one occasion doesn't accomplish what she needs to do to
25 clear out of there, can she get permission from pretrial for a

1 short visit?

2 THE COURT: No, you'll have to come back to the
3 court.

4 MR. SHEPPARD: Come back to court? Okay.

5 THE COURT: While the paperwork is being reviewed by
6 the court, my courtroom deputy will be giving you further dates
7 in front of the District Court Judge.

8 THE CLERK: 16.18 conference by September 25th.
9 Pretrial motions by October 7th. Response, by October 17th.
10 Replies by October 24th. And the status hearing is set for
11 October 15th at 9:30 a.m. before Judge Dow.

12 MR. SHEPPARD: October 15th?

13 THE CLERK: Correct, at 9:30 a.m.

14 MR. SHEPPARD: Thank you.

15 THE CLERK: You're welcome.

16 THE COURT: All right. Ms. Nesbitt, we're going to
17 go over your conditions of release. I want you to listen very
18 carefully. You will be released on an unsecured bond in the
19 amount of \$250,000. You will submit to supervision by pretrial
20 services. You will actively seek employment. You will
21 surrender any passport you have to pretrial services, and you
22 can have 48 hours to do so. You will not try to get another
23 passport or any international travel document, and your travel
24 is going to be restricted to the Northern District of Illinois.
25 You will avoid all contact, directly or indirectly, with any

1 persons who may be a victim or witness in this case. This is
2 including but not limited to all current and former employees
3 and clients -- employees and/or independent contractors.

4 MR. SU: That's correct.

5 THE COURT: And clients of Selective Management
6 Enterprises Incorporated, doing business as Kink
7 Extraordinaires. Do you understand that restriction? She
8 indicates that she does.

9 You are not to possess a firearm, destructive device
10 or other dangerous weapon. You are not to use alcohol
11 excessively. You are not to use or unlawfully possess a
12 narcotic drug or other controlled substance, unless it is
13 prescribed by a licensed medical practitioner. You will report
14 as soon as possible to pretrial services any contact that you
15 may have with law enforcement while you're out on bond. You
16 also must surrender your FOID card to pretrial services and
17 transfer any firearms that you have in your possession to a
18 lawfully registered owner and provide confirmation of that
19 transfer within 24 hours. Do you understand that? She
20 indicates that she does.

21 You may not engage in prostitution or fetish activity
22 of any kind, either personally or through others. And you may
23 not go to 2452 West Augusta Boulevard, Chicago, Illinois,
24 except on one occasion. Do you understand these conditions of
25 release? Yes?

1 You understand that if you violate any one of these
2 conditions it could result in your bond being revoked and you
3 being placed into federal custody. Yes?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that, if you fail to
6 make a court hearing in which you had been ordered to appear,
7 it could not only result in your bond being revoked but in
8 possibly new charges being filed against you. Do you
9 understand this?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. I'm holding up what appears
12 to be your signature on the two pieces of paper of the bond.
13 Are those, in fact, your signatures?

14 THE DEFENDANT: Yes.

15 THE COURT: She acknowledges her signature on the
16 bond on both sheets. The court is agreeing to the conditions
17 of release and signing off on the conditions. And has she been
18 processed by the marshals yet?

19 MR. SHEPPARD: Yes, your Honor.

20 THE COURT: She has been? So there is nothing
21 further --

22 PRETRIAL SERVICES OFFICER: Your Honor, I believe she
23 would need to go back up to 24th floor.

24 THE COURT: She will need. Okay. So she needs to go
25 back up to the marshals once before she leaves again. So if

1 she is ordered release after processing?

2 MR. SHEPPARD: She will -- I will escort her back to
3 24.

4 THE COURT: I think after bond conditions she has to
5 go back up there to let them know what is going on.

6 All right. Anything further on behalf of the
7 government?

8 MR. SU: Your Honor, the government moves to unseal
9 the indictments, as well as to exclude time until October 15th
10 in the interest of justice and to allow for preparation of
11 pretrial motions.

12 THE COURT: Any objection?

13 MR. SHEPPARD: No.

14 THE COURT: All right. Those motions are granted.
15 Anything further on behalf of Ms. Nesbitt?

16 MR. SHEPPARD: I'm sorry, your Honor, my client was
17 asking me a question.

18 THE COURT: Anything further?

19 MR. SU: That's it, your Honor.

20 MR. SHEPPARD: No. Thank you, your Honor.

21 THE COURT: All right. Thank you very much.

22 THE CLERK: All rise. Court is now adjourned.

23 (Which were all the proceedings heard.)
24
25

1 CERTIFICATE

2 I certify that the foregoing is a correct transcript from
3 the digital recording of proceedings in the above-entitled
4 matter to the best of my ability, given the limitations of
5 using a digital-recording system.

6
7 */s/Sandra M. Mullin*

January 16, 2020

8
9 Sandra M. Mullin
Official Court Reporter

Date

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25